



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

July 9, 1998

Ms. Dorothy J. Willis  
Board of Registration, Allendale County  
P.O. Box 552  
Allendale, South Carolina 29810

RE: Informal Opinion

Dear Ms. Willis:

Your opinion request has been forwarded to me for reply. You have asked whether it is legal for an individual working for the South Carolina Department of Mental Health to also serve on the Allendale County Voter Registration and Elections Commission. This opinion will address your question as it relates to the dual office holding prohibitions of the South Carolina Constitution. In regards to whether there would be certain ethical considerations involved, I would respectfully request that you contact the State Ethics Commission for information on that subject.

Article XVII, Section 1A of the state Constitution provides that "no person may hold two offices of honor or profit at the same time ..." with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

The Allendale County Registration and Elections Commission was created pursuant to Act No. 198 of 1993. Members of the Board are appointed as provided in the Act for "terms of four years and until their successors are appointed and qualify" with provision made for staggered appointments. All monies annually disbursed for county board of

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registration members and county elections commissions by the State Election Commission must be divided equally among the seven members of the commission created pursuant to the provisions of this act. Powers formerly exercised by the Allendale County Commissioners of Election and the Registration Board for Allendale County have been devolved upon the Registration and Elections Commission, with the former boards being abolished.

This Office has never specifically addressed whether membership on the Allendale County Registration and Elections Commission would be considered an office for dual office holding purposes. However, we have previously concluded that members of the Beaufort County Board of Elections and Registration would be considered office holders. Op. Atty. Gen. dated July 23, 1996. This conclusion was based on longstanding opinions of this Office which found that members of county voter registration boards and members of county election commissions would both be considered office holders for dual office holding purposes. In the July 23, 1996 opinion, it was stated:

Because the Beaufort County Board of Elections and Registration is in effect a board consolidating the powers, duties, responsibilities, and functions of a county election commission and a voter registration board, membership on each constituting an office, it is an inescapable conclusion that membership on a board like the Beaufort County Elections and Registration Board would likewise constitute an office for dual office holding purposes.

I believe the conclusion reached in the July 23, 1996 opinion would apply to the Allendale County Registration and Elections Commission as well. Accordingly, a member of the Allendale County Registration and Elections Commission would be considered an office holder for dual office holding purposes.

Turning now to the question of whether an employee of the South Carolina Department of Mental Health would be considered an office holder for dual office holding purposes, to be an office holder, one must exercise some portion of the sovereign power of the state. The court in Sanders v. Belue, supra, acknowledged that there is a generally accepted distinction between a public officer and an employee:

One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing and not occasional or intermittent, is a public officer. Conversely, one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such person be themselves public officers, and though

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the employment be in or about a public work or business, is a mere employee.

Without knowing the exact duties of the individual in question, I can only advise you if the individual's duties involve an exercise of the sovereign power of the state, the individual would be considered an office holder. If such is the case, the dual office holding prohibitions of the state Constitution would be violated if the individual were to simultaneously serve on the Registration and Elections Commission. However, if the individual's duties do not involve an exercise of the sovereign power of the state, the individual would be considered a mere employee. If that is the case, the individual would not be prohibited under the Constitution from simultaneously serving in both capacities.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,

A handwritten signature in dark ink, appearing to read "Paul M. Koch". The signature is written in a cursive, slightly stylized font.

Paul M. Koch  
Assistant Attorney General